



This Recommended Order and Decision became the Order and Decision of the
Illinois Human Rights Commission on 7/01/04.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
DAVID A. GOMOLKA,)	
)	
COMPLAINANT,)	
)	CHARGE NO. 2002CA0883
)	ALS NO. 11964
AND)	
)	
)	
QUOTESMITH.COM, INC.,)	
)	
RESPONDENT.)	

RECOMMENDED ORDER AND DECISION

On December 12th, 2002, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, David A. Gomolka. That complaint alleged that the Respondent in this matter, Quotesmith.com, Inc., discriminated against Complainant on the basis of his age, 49 years, when they terminated him from employment in September 2001.

This matter is presently before me pursuant to Respondent's Motion for Summary Decision, which was filed on August 15th, 2003. Despite the fact that over eight months have passed since the filing of Respondent's motion, Complainant has repeatedly failed to file a Response thereto. The matter is now ready for decision.

FINDINGS OF FACT

1. On June 4th, 2003, both parties appeared through counsel at a status hearing before Administrative Law Judge Sabrina M. Patch.

2. At the June 4th, 2003 status hearing, Judge Patch ordered Respondent to file its Motion for Summary Decision by August 15th, 2003, Complainant to file his Response thereto by September 12th, 2003 and Respondent to file a Reply by September 26th, 2003. In addition, Judge Patch ordered the parties to appear again for status on October 21st, 2003.
3. On August 15th, 2003, in accordance with the briefing schedule set by Judge Patch, Respondent filed with the Commission its *Motion for Summary Decision on the Complaint and Memorandum in Support of its Motion for Summary Decision*. Attached to Respondent's motion was a Certificate of Service dated August 15th, 2003 directed to Complainant's counsel, L. Steven Platt, 19 W. Jackson Blvd., Chicago, Illinois 60604.
4. As of September 12th, 2003, Complainant failed to file any Response to Respondent's Motion for Summary Decision.
5. Despite the fact that Complainant had not filed a Response, on September 26th, 2003, in accordance with the briefing schedule ordered by Judge Patch, Respondent timely filed its Reply.
6. On October 1st, 2003, Complainant's counsel filed a motion entitled *Complainant's Motion for a Briefing Schedule*. In that motion, counsel for Complainant alleged that he had never received Respondent's Motion for Summary Decision due to it possibly having been misplaced at Complainant's counsel's office or due to it having been undelivered. Complainant's counsel also asserted that he only learned of Respondent's motion after being served with Respondent's Reply on September 30th, 2003.
7. In *Complainant's Motion for a Briefing Schedule* of October 1st, 2003, Complainant's counsel asked that he be given a certain period of time to

respond to Respondent's Motion for Summary Decision and that Respondent be given a date to reply.

8. On October 8th, 2003 a status hearing was held before former Administrative Law Judge William H. Hall. On that date Judge Hall ordered Complainant's counsel to file a Response to Respondent's Motion for Summary Decision by November 7th, 2003. Respondent was ordered to file its Reply by November 21st, 2003.
9. On January 27th, 2004, Administrative Law Judge Mariette Lindt reviewed the record file in this matter. Judge Lindt discovered that there had been no activity on the case since the October 8th, 2003 status hearing and that Complainant had failed to file a Response to Respondent's motion as ordered by Judge Hall on October 8th, 2003.
10. On January 27th, 2004, this matter was before Judge Lindt *sua sponte*. On that date Judge Lindt entered an order ordering the parties to appear for a status hearing on February 17th, 2004 at 2:00 p.m. In addition, Judge Lindt ordered the Complainant to file his Response on or before February 17th, 2004 and for Respondent to file its Reply on or before March 2nd, 2004.
11. On February 17th, 2004 the parties' counsel appeared for the status hearing. At that time, Complainant's counsel presented a written motion to Judge Lindt entitled *Gomolka's Request for a One-Week Extension of Time*. In that motion, Complainant's counsel requested an extension until February 24th, 2004 to file his response to Respondent's Motion for Summary Decision.
12. Upon review of the Complainant's February 17th, 2004 motion for an extension of time, Judge Lindt entered an order on that date granting Complainant's counsel until February 24th, 2004 to file his Response to Respondent's Motion for Summary Decision. Judge Lindt also ordered

Respondent to Reply by March 16th, 2004 and scheduled the matter for status on April 7th, 2004 at 10:00 a.m.

13. Complainant failed to file a response to Respondent's Motion for Summary Decision by February 24th, 2004.
14. On April 7th, 2004, Respondent's counsel appeared for the scheduled status hearing, Complainant's counsel failed to appear.
15. On April 7th, 2004, after reviewing the record in this matter, Judge Lindt noted that Complainant's counsel had still failed to file any Response to Respondent's Motion for Summary Decision. Judge Lindt entered an order stating that she would rule on Respondent's Motion for Summary Decision by mail.
16. On April 7th, 2004, Respondent's counsel filed a Certificate of Service with the Commission evidencing service on Complainant's counsel of the April 7th, 2004 order entered by Judge Lindt.
17. As of April 29th, 2004, Complainant's counsel has still failed to file a Response to Respondent's Motion for Summary Decision.

CONCLUSIONS OF LAW

1. 56 Ill. Admin. Code Part 5300.735 (a) states in relevant part that: *At any time after the service of a complaint and prior to service of a decision pursuant to Section 8A-102(I), Section 8A-102.5(B)(4) or Section 8B-102(J) of the Act, the Complainant or the Respondent may move with or without supporting affidavits for a summary order in the moving party's favor as to all or any part of the relief sought.*
2. The standard used by this tribunal to evaluate motions for summary decision is the same as those employed by Illinois courts in determining motions for

summary judgment. *Cano v. Village of Dolton*, 250 Ill.App.3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 883 (1st Dist. 1993).

3. This tribunal is under no obligation or duty to search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the party opposing the motion cannot tell this tribunal the reasons why the motion should not be granted, the motion may be granted. *Jones and Burlington Northern Railroad*, 25 Ill.H.R.C. Rep. 101 (1986).
4. A party has five days or an extension thereof to respond to a motion, but not to exceed forty-five days. 56 Ill. Admin Code, Ch. XI, §5300.730(b). An absence of a response shall be deemed an absence of an objection to the motion.
5. Because Complainant has failed to respond to Respondent's Motion for Summary Decision, there is no genuine issue of material fact that exists between the parties for a trier of fact to resolve. Therefore, pursuant to 775 ILCS 5/8-106.1, Respondent is entitled to a recommended order as a matter of law.
6. Complainant has unreasonably delayed the proceedings in this case by failing to respond to Respondent's Motion for Summary Decision, and therefore, pursuant to Section 5300.750(e) of the Commission's procedural rules, the Administrative Law Judge may recommend dismissal of the complaint with prejudice.

DETERMINATION

Respondent's Motion for Summary Decision should be granted and the underlying complaint dismissed with prejudice due to the Complainant's failure to file a Response to the pending motion or otherwise indicate intent to proceed with the case.

DISCUSSION

On August 15th, 2003, Respondent filed a well-grounded motion for Summary Decision. In that motion, Respondent argues that it is entitled to a decision in its favor because the discovery conducted in this case, along with the affidavits Respondent has submitted in support of its motion, demonstrate that the undisputed facts fail to support Complainant's age discrimination claim.

Although Complainant has been given numerous opportunities to file a Response to Respondent's motion, Complainant has simply failed to do so. Rather, Complainant has chosen to ignore orders entered by the Administrative Law Judge, specifically the orders of October 8th, 2003 and February 17th, 2004. Complainant also failed to appear for the scheduled status hearing on April 7th, 2004 to explain why he had missed the February 24th, 2004 extension deadline provided to him for the filing of a Response to Respondent's motion.

In *Jones and Burlington Northern Railroad*, 25 Ill. HRC Rep. 101, the Illinois Human Rights Commission stated, " [w]e will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion." *Jones at 102*.

For over eight months, Complainant has ignored Respondent's motion, along with various orders entered by this tribunal. Complainant has provided this tribunal with absolutely nothing to contradict Respondent's motion or otherwise provide reasons why the motion should not be granted.

In addition, Section 5300.750(e) of the Commission's procedural rules provides that if a party engages in conduct that unreasonably delays or protracts the proceedings, the Administrative Law Judge may recommend that the Commission dismiss the complaint with prejudice. Complainant's counsel has no doubt unreasonably delayed these

proceedings by failing to respond to Respondent's Motion for Summary Decision which has been pending since August of 2003.

RECOMMENDATION

Based upon the above findings of fact and conclusions of law, I recommend that the Illinois Human Rights Commission grant Respondent's Motion for Summary Decision. I further recommend that the complaint, together with the underlying charge number 2002CA0883, be dismissed with prejudice.

ENTERED: April 29th, 2004

HUMAN RIGHTS COMMISSION

**MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

